IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 661 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
          MR.JUSTICE K.R.VYAS
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1. Whether Reporters of Local Papers may be allowed   : YES
   to see the judgements?

2. To be referred to the Reporter or not?   : YES

3. Whether Their Lordships wish to see the fair copy   : NO
   of the judgement?

4. Whether this case involves a substantial question   : NO
   of law as to the interpretation of the Constitution
   of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?   : NO

   KALPESHKUMAR BHIKHALAL VOHARA
Versus
   DALPATBHAI MANILAL SHAH

   Appearance:
        MR SURESH M SHAH, Advocate for Petitioner
        MR JAL UNWALLA, Advocate for Respondent Nos. 1 & 3
        MS. AMEE YAGNIK, ADDL.PUBLIC PROSECUTOR
        for Respondent No. 2

   CORAM : MR.JUSTICE R.K.ABICHANDANI and
            MR.JUSTICE K.R.VYAS
   Date of decision: 06/08/1999

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

   Rule. Mr. Jal Unwalla, appearing for the
respondents Nos. 1 and 3 waives service of rule. The
learned Additional Public Prosecutor also waives service

of rule.

Pursuant to the notice issued on this petition, Manisha – the respondent No.3 has appeared before us and is represented through her Advocate. The learned Counsel for the petitioner states that the petitioner and the respondent No.3 were married as per the copy of the marriage certificate, which is at annexure "C" to the petition. It is alleged that the respondent No.3 is illegally detained by her father. The petitioner has prayed in paragraph 15(A) of the petition that the respondent No.3 should be allowed to come to the house of the petitioner and that the petitioner should be permitted to "have her custody – as her husband".

We gave an exclusive audience to the respondent No.3 Manisha, who has in no uncertain terms told us that she does not want to go with the petitioner. In fact she disputed having married the petitioner and has stated before us that she has not been illegally detained by anyone. She repeated this fact even before the learned Counsel for both the sides. We are satisfied that Manisha who has studied upto Eleventh Standard, is capable of taking her own decisions. Admittedly, she is an adult of 21 years of age. She therefore, cannot be compelled to go to the petitioner even on an assumption that marriage may have been performed.

The claim of the petitioner to the custody of the respondent No.3 who is an adult lady is misconceived. The concept of custody of a child has its rationale in the incapacity of a child to take care of itself and its legal rights. An adult capable of taking his or her own decision will however, not be amenable to custody of any other person except in accordance with law. Thus, there can be no question of taking custody of this adult lady whether married or not. She has a full legal personality with all the constitutional and legal rights and her liberty cannot be curtailed by treating her as a chattel and handing over her possession or custody to the claimant, be it her parent or husband. A husband has no legal right to possess his wife and keep her in his custody. He may have conjugal rights but they do not carry the concept of custody by a guardian of his ward. The very concept of claiming custody of an adult person is an anathema and an archaic concept by which humans are treated as slaves or chattel. The inquiry in habeas corpus is whether a person is illegally detained by any other person or authority. The idea is to ensure freedom and restore the liberty of the person detained and not to put an adult and a capable person in someone's custody

against his or her desire. The writ ensures freedom of movement and personal liberty. We are satisfied in this case that respondent No.3 - Manisha, who is an adult lady is not being illegally detained by her father or anyone else. She is free to go wherever she likes.   We therefore, reject the petition. Rule is discharged.

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*/Mohandas